

2025 Post-Legislative Conference

LEGISLATION AFFECTING SCHOOLS



Bills Covered

- HB 6 – school discipline
- HB 1481 – phones in school
- SB 207 – excused absences for mental health appointments
- SB 870 – school marshals



School Marshals

- Allows uniformed school marshals to openly carry a handgun in public schools, private schools, and junior colleges
- Prior law was concealed carry and did not require a uniform
- Can still conceal carry if no uniform



Mental Health Appointments

- Explicitly provides that absences for mental health appointments are excused as health care appointments



Personal Communication Devices

- Districts and OE charters must adopt and enforce policy prohibiting student from using personal communication devices while on school property during school day
- Must provide for discipline for violations of the policy



Personal Communication Devices

- May prohibit students from possessing devices OR
- May designate a method for storing the device while the student is on school property during the school day
- Must allow student to use:
 - If necessary for IEP, 504, or similar plan
 - If medically necessary, with doctor note
 - If necessary to comply with district or school safety protocols



Personal Communication Devices

- Telephone
- Cell phone (such as smartwatch or flip phone)
- Tablet
- Smart watch
- Radio device
- Paging device
- Any other electronic device capable of telecommunication or digital communication
- Does not include device provided by school or district



Historical Perspective

- Safe Schools Act, originally passed in 1994 at federal level and 1995 in Texas (Ch. 37)
- Had zero tolerance for "mandatory" actions by using word "shall"



Historical Perspective

- 2003 (HB1314): Student code of conduct had to specify whether or not self-defense was a factor in decision for suspension, DAEP, or expulsion
- 2005 (HB603): Expanded to include:
 - Intent or lack of intent
 - Student's disciplinary history
 - Whether student has a disability that substantially impairs capacity to appreciate wrongfulness of conduct



Historical Perspective

- 2009 (HB 171): School districts had to, rather than *could*, enact student code of conduct requiring all four factors be considered
- 2015 (SB 107): added language in 37.009 reinforcing that the 4 factors had to be considered, *whether it was discretionary or mandatory action*
- 2023 (HB 114): added language in 37.006 and 37.007 directing reader to the requirement regarding the 4 factors



Historical Perspective

- 2019 (HB 811): added status as homeless and status as being in DFPS conservatorship to the factors that must be considered per student code of conduct



"Mandatory" Expulsion

- No longer applies only to conduct on school property or while attending a school-sponsored or school-related activity



"Mandatory" Expulsion

- Unlawfully Carry Weapon 46.02
- Prohibited Weapon 46.05
- Aggravated Assault
- Sex Assault; Agg Sex Assault
- Arson
- Murder, Cap Murder, Attempt
- Indecency with Child
- Agg Kidnapping, **Kidnapping**
- Agg Robbery, **Robbery**
- Manslaughter
- Criminally Negligent Homicide
- Cont. Sex Abuse Young Child or Individual with Disability
- Felony selling, giving, delivering, or possessing a dangerous drug or controlled substance (not marijuana)
- **Burglary 30.02**
- **Assault Bodily Injury to school employee or volunteer 22.01(a)(1)**
- **Exhibit, Use, Threaten to Exhibit or Use Firearm under 37.125**



"Mandatory" Expulsion

- Unchanged: Student who brings firearm to school "shall be" expelled for one year except may modify length in case of individual student and shall provide services in DAEP if under 10 and may provide in DAEP if 10 or older



Numbers

- Calendar Year 2024 referrals for all offenses that are now mandatory regardless of location: 13,519 (27% of all 50,473 referrals)
- School Year 2024-2025 mandatory expulsions: 820



"Discretionary" Expulsion

- General location parameters remain unchanged: on or within 300 feet of school property or while attending a school-sponsored or school-related activity



"Discretionary" Expulsion On or Off School Property

- Conduct involving a public school and containing offense of false alarm or report
- Conduct involving a public school and containing offense of terroristic threat
- Breach of computer security involving school computers, networks, and systems
- Felony criminal mischief – mandates referral to juvenile court (note: location is not specified and never has been)
- Engaging in serious misbehavior while in a DAEP



"Discretionary" Expulsion

- Documented Serious Misbehavior while in DAEP and while on program campus, despite documented behavioral interventions
 - Deliberate violent behavior that poses direct threat to the health or safety of others
 - Extortion, meaning the gaining of money or other property by force or threat
 - Coercion
 - Public lewdness
 - Indecent exposure
 - Criminal mischief
 - Personal hazing
 - Harassment (42.07(a)(1)) of a student or district employee



"Discretionary" Expulsion Location Parameters Remain

- Non-felony selling, giving, delivering, or possessing a dangerous drug or controlled substance (not marijuana)
- Selling, giving, delivering, or possessing marijuana or alcoholic beverage
- Using or being under influence of controlled substance, dangerous drug, marijuana, alcoholic beverage
- Commits serious act or offense while under influence of alcohol
- Abusable volatile chemical offense
- Deadly conduct
- Excludes any conduct covered as "mandatory" expulsion under 37.007(a)



"Discretionary" Expulsion Location Parameters Remain

- Possession of firearm within 300 feet of school property (does not include school-related or school-sponsored activity)
- No reference to excluding "mandatory" expulsion conduct



"Discretionary" Expulsion

Court or Law Enforcement Action

No Location Requirement

- Applies to Title 5 felonies and aggravated robbery
- Referred to juvenile court or arrested as adult
- Charged in juvenile or adult court
- Deferred prosecution in juvenile or deferred adjudication in adult court
- Adjudicated or convicted AND
- Presence in regular classroom threatens the safety of other students, will be detrimental to the educational process, or is not in best interest of students



Conflicts with 37.007

- 37.0081 provides that, in the event of a conflict, 37.007 controls
- All Title 5 felonies that are in 37.007 are also in 37.0081, but not all Title 5 felonies are in 37.007



Virtual Expulsion Program

- If expelled, may be placed in program operated by district if:
 - County has JJAEP or contract with another and JJAEP rejects student or returns before expiration of assignment OR
 - County has no JJAEP or contract with another county for JJAEP
- District must ensure student has suitable computer equipment and Internet service and program complies with 37.008, to the extent practicable
- Placement reviewed every 45 days
- Teacher cannot be required to provide both in-person and virtual at same time



"Mandatory" DAEP

- General location parameters are on or within 300 feet of school property or while attending a school-sponsored or school-related activity



"Mandatory" DAEP

On or Off School Property

- Conduct involving a public school and containing offense of false alarm or report
- Conduct involving a public school and containing offense of terroristic threat
- Retaliation against a school employee or volunteer
- Harassment against a school employee or volunteer



"Mandatory" DAEP Location Parameters Remain

- Felony not covered by "mandatory" expulsion
- Assault causing bodily injury
- Public lewdness
- Indecent exposure
- Harassment under 42.07(a)(1)-(3) or (7) against a district employee



"Mandatory" DAEP Location Parameters Remain

- Controlled substance or dangerous drug (non-felony and not marijuana or THC): Selling, giving, delivering, possessing, or being under influence of
- Marijuana or THC: Selling, giving, delivering, possessing, or being under influence of
- Alcoholic beverage: Selling, giving, delivering, possessing, or being under influence of or committing a serious offense while under influence of
- E-cigarette: Selling, giving, delivering
- Abusable volatile chemical offense



"Mandatory" DAEP

Deferred Prosecution, Adjudication, Superintendent Reasonable Belief
Occurs off campus and not at SSA or SRA

- Title 5 Felony
- Aggravated Robbery
- Deadly Conduct
- Disorderly Conduct involving firearm
- UCW under 46.02, other than Class C misdemeanor

***No reference to conflict with "mandatory" expulsion



"Discretionary" DAEP

Felony (not Title 5 or Agg Robbery)

- Off campus and not at school-sponsored or related activity
- Reasonable belief
 - Engaged in the conduct AND
 - Continued presence in regular classroom threatens safety of students or teacher or will be detrimental to the educational process
- No reference to conflict with "mandatory" expulsion



"Discretionary" DAEP

- Disruptive activities under 37.123
- Disruption of classes if intentional and repeated and person is 12 or older when occurred
- Possessing or using an e-cigarette



"Discretionary" DAEP

- E-cigarettes
 - If not placed in DAEP for first time offense, must be placed in in-school suspension for at least 10 days*
- Statute does not actually say this possession must occur on or within 300 feet of school or at school-sponsored or school-related activity
- *Student Code of Conduct must provide that student may be placed in DAEP for first-time possession or use of nicotine delivery or e-cigarette



Emergency Placement or Expulsion

- Immediate Placement in DAEP if:
 - Behavior so unruly, disruptive, or abusive that it seriously interferes with teacher ability to communicate effectively with class, ability of class to learn, or operation of school or school-sponsored activity
- Immediate Expulsion if:
 - Reasonably believed necessary to protect persons or property from imminent harm
- May be based on single incident of behavior



Parental Involvement

- School Board allowed to adopt a policy
- Policy must have behavioral agreement for parents and students
- If comply with terms, length of disciplinary placement will be reduced
- School has discretion on reduction



Removal from Class

- Teacher may remove student
 - who repeatedly interferes with ability to communicate effectively with class or ability of class to learn
 - Demonstrates unruly, disruptive, or abusive behavior toward teacher, another adult, or another student
 - Engages in bullying
- May remove based on single incident of behavior
- Adds a return to class plan to the process
- Student may appeal removal



Suspension

- Out-of-school suspension limited to three days
- In-school suspension unlimited; requires review every 10 days
- In-school must get appropriate behavioral support services and comparable educational services as would get in classroom, including special education services
- Can reassign from out-of-school to in-school if parent demonstrates unable to provide suitable supervision – may be used only in extenuating circumstances and not routinely



Suspension

- Below 3rd grade may be in out-of-school only if:
 - Conduct related to weapons under 46.02 and 46.05
 - Conduct that threatens immediate health and safety of other students
 - Documented conduct that results in repeated or significant disruption to classroom
 - Selling, giving, possessing, using, or being under influence of marijuana, controlled substance, dangerous drug, or alcohol



District of Innovation

- Innovation plan may not provide for exemption from Chapter 37



Drugs and Alcohol

- Controlled substance or dangerous drugs (non marijuana or THC):
 - Felony-level selling, giving, delivering, or possessing, any location: "mandatory" expulsion
 - Non-felony level selling, giving, delivering, or possessing, on or within 300 feet or at school-sponsored or related activity: "discretionary" expulsion and "mandatory" DAEP
 - Using or being under influence of on or within 300 feet or at school-sponsored or related activity: "discretionary" expulsion and "mandatory" DAEP



Drugs and Alcohol

- Marijuana/THC
 - Selling, giving, delivering, possessing, using, or being under the influence of while on or within 300 feet of school property or at school-sponsored or related activity: "discretionary" expulsion and "mandatory" DAEP
- Abusable Volatile Chemicals
 - Engaging in conduct containing the elements of a related offense while on or within 300 feet of school property or at school-sponsored or related activity: "discretionary" expulsion and "mandatory" DAEP



Drugs and Alcohol

- Alcohol
 - Selling, giving, delivering, possessing, using, or being under the influence of, while on or within 300 feet of school property or at school-sponsored or related activity: "discretionary" expulsion
 - Above plus or committing a serious act or offense while under the influence of: mandatory DAEP



Drugs and Alcohol

- E-Cigarette

- Selling, giving, or delivering to another person an e-cigarette while on or within 300 feet of school property or at a school-sponsored or related activity: "mandatory" DAEP
- Possessing or using (no location referenced in statute): "discretionary" DAEP; if not placed in DAEP for first offense, must be placed in in-school suspension for at least 10 days



Weapons

- **Unlawfully Carrying Weapon 46.02**

- Person under 21 has handgun on or about person and is not on property or in vehicle/watercraft owned by or under their control (or in direct route to) (Class B)
- Person under 21 has handgun in vehicle/watercraft owned by or under their control and handgun is in plain view OR the person is engaged in criminal activity (other than Class C traffic/boating regulation) (Class B)
- Person under 18 has location-restricted knife on or about person and is not on premises or vehicle/watercraft owned by or under their control (or in direct route to) OR under direct supervision of parent (Class C)



Weapons

- Prohibited Weapons 46.05
 - Explosive weapon
 - Machine gun
 - ~~Short-barrel firearm~~ (SB 1596 legalized)
 - Armor-piercing ammunition
 - Chemical dispensing device
 - Zip gun
 - Tire deflation device



Weapons

- Places Weapons Prohibited 46.03
 - Possesses or goes with a firearm, location-restricted knife, club, or prohibited weapon on the premises of a school or premises owned by a school and on which a school-sponsored activity is being conducted or on passenger transportation (F3)



Weapons

- Handgun
 - UCW 46.02 at school: "mandatory" DAEP by explicit reference; "mandatory" expulsion under new provision of UCW any location
 - UCW 46.02 not at school: "mandatory" expulsion
 - Special gun at school provision 37.007 (e): "mandatory" expulsion
 - Special gun within 300 feet of school provision 37.007 (b)(3): "discretionary" expulsion
 - Places weapons prohibited at school under 46.03: "mandatory" DAEP



Weapons

- Location-Restricted Knife
 - Places weapons prohibited at school, 46.03, any age: "mandatory" DAEP
 - UCW, 46.02, at school and under 18 – expressly exempt from "mandatory" DAEP because a Class C misdemeanor
 - UCW, 46.02, under 18 anywhere – "mandatory" expulsion
 - Age 18 or older – 46.02 doesn't apply



Contact Information

James Bateman: james.bateman@tjjd.texas.gov 512.416.8929

Alawan Thomas: alawan.thomas@tjjd.texas.gov 737.218.0847

Kaci Singer: kaci.singer@tjjd.texas.gov 512.490.7623

TJJD Help Desk: legalhelp@tjjd.texas.gov 512.490.7121

